

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 445

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1302, IDAHO CODE, TO REVISE THE DEFINITION OF "EMPLOYEE" AND TO REVISE PROVISIONS RELATING TO THOSE THAT DO NOT MEET THE DEFINITION OF "EMPLOYEE"; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 59-1302, Idaho Code, be, and the same is hereby amended to read as follows:

59-1302. DEFINITIONS. (1) As used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) "Active member" means any employee who is not establishing the right to receive benefits through his or her employer's participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho statutes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(3) "Accumulated contributions" means the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) "Actuarial equivalent" means a benefit equal in value to another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuarial tables" means such tables as shall have been adopted by the board in accordance with recommendations of the actuary.

(5A) "Alternate payee" means a spouse or former spouse of a member who is recognized by an approved domestic retirement order as having a right to all or a portion of the accrued benefits in the retirement system with respect to such member.

(5B) "Approved domestic retirement order" means a domestic retirement order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to all or a portion of the accrued benefits of a member under the retirement system, which directs the system to establish a segregated account or disburse benefits to an alternate payee, and which the executive director of the retirement system has determined meets the requirements of sections 59-1319 and 59-1320, Idaho Code.

(5C) "Average monthly salary" means the member's average salary during the base period as calculated pursuant to rules adopted by the retirement board.

(5D) (a) "Base period" means the period of fifty-four (54) consecutive calendar months during which the member earned:

- (i) The highest average salary; and
- (ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:
 - A. Military service;
 - B. Service qualifying as minimum benefit pursuant to section 59-1342(5), Idaho Code; and
 - C. Worker's compensation income benefits.

(b) Effective October 1, 1993, the consecutive calendar months shall be forty-eight (48). Effective October 1, 1994, the consecutive calendar months shall be forty-two (42).

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(6) "Beneficiary" means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(7A) "Contingent annuitant" means the person designated by a member under certain retirement options to receive benefit payments upon the death of the member. The person so designated must be born and living on the effective date of retirement.

(8) "Credited service" means the aggregate of membership service, prior service and disabled service.

(9) "Date of establishment" means July 1, 1965, or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for disability retirement.

(12) "Disabled" means:

(a) That the member is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country other than the United States, or from an intentionally self-inflicted injury; and

(b) That the member will likely remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are rea-

sonably closed to the person, that condition is within the meaning of "disabled." In evaluating whether a person is disabled, medical factors and non-medical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(12A) "Disabled service" means the total number of months elapsing from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(12B) "Domestic retirement order" means any judgment, decree, or order, including approval of a property settlement agreement which relates to the provision of marital property rights to a spouse or former spouse of a member, and is made pursuant to a domestic relations law, including the community property law of the state of Idaho or of another state.

(13) "Early retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for early retirement.

(14) (A) "Employee" means:

(a) Any person who ~~normally works twenty (20) one thousand three hundred eighty-seven (1,387) hours or more per week in a calendar year~~ for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer;

(b) Elected officials or appointed officials of an employer who receive a salary;

(c) A person who is separated from service with less than ~~five (5) consecutive months~~ one thousand three hundred eighty-seven (1,387) hours of employment with the same employer and who is reemployed or reinstated by the same employer within thirty (30) days in the same calendar year; or

(d) A person receiving differential wage payments as defined in 26 U.S.C. 3401(h) on or after July 1, 2009. A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

(B) "Employee" does not include employment as:

1 (a) A person rendering service to an employer in the capacity of an in-
 2 dependent business, trade or profession; or

3 (b) A person whose employment with any employer does not total ~~five~~
 4 ~~(5) consecutive months~~ one thousand three hundred eighty-seven (1,387)
 5 hours in a calendar year; or

6 (c) A person provided sheltered employment or made-work by a public em-
 7 ployer in an employment or industries program maintained for the bene-
 8 fit of such person; or

9 (d) An inmate of a state institution, whether or not receiving compen-
 10 sation for services performed for the institution; or

11 (e) A student enrolled in an undergraduate, graduate, or professional-
 12 technical program at and employed by a state college, university, com-
 13 munity college or professional-technical center when such employment
 14 is predicated on student status; or

15 (f) A person making contributions to the United States civil service
 16 commission under the United States Civil Service System Retirement Act
 17 except that a person who receives separate remuneration for work cur-
 18 rently performed for an employer and the United States government may
 19 elect to be a member of the retirement system in accordance with rules of
 20 the board; or

21 (g) A person not under contract with a school district or charter
 22 school, who on a day to day basis works as a substitute teacher replac-
 23 ing a contracted teacher and is paid a substitute wage as established
 24 by district policy or who, on a day to day basis works as a substitute
 25 assistant replacing a staff instruction assistant or a staff library
 26 assistant and is paid a substitute wage as established by district pol-
 27 icy; or

28 ~~(h) A person occupying a position that does not exceed eight (8) con-~~
 29 ~~secutive months in a calendar year with a city, county or irrigation~~
 30 ~~district when the city, county or irrigation district has certified,~~
 31 ~~in writing to the system, the position is (i) seasonal or casual; and~~
 32 ~~(ii) affected by weather and the growing season, including parks, golf~~
 33 ~~course positions and irrigation positions; or~~

34 ~~(i) A person in a position that (i) is eligible for participation in~~
 35 ~~an optional retirement program established under section 33-107A or~~
 36 ~~33-107B, Idaho Code, or (ii) would be eligible for participation in~~
 37 ~~an optional retirement program established under section 33-107A or~~
 38 ~~33-107B, Idaho Code, if the person was not working less than half-time~~
 39 ~~or less than twenty (20) hours per week.~~

40 (15) "Employer" means the state of Idaho, or any political subdivision
 41 or governmental entity, provided such subdivision or entity has elected to
 42 come into the system. Governmental entity means any organization composed
 43 of units of government of Idaho or organizations funded only by government
 44 or employee contributions or organizations who discharge governmental re-
 45 sponsibilities or proprietary responsibilities that would otherwise be per-
 46 formed by government. All governmental entities are deemed to be political
 47 subdivisions for the purpose of this chapter.

48 (15A) "Final contribution" means the final contribution made by a mem-
 49 ber pursuant to sections 59-1331 through 59-1334, Idaho Code.

1 (16) "Firefighter" means an employee, including paid firefighters
2 hired on or after October 1, 1980, whose primary occupation is that of pre-
3 venting and extinguishing fires as determined by the rules of the board.

4 (17) "Fiscal year" means the period beginning on July 1 in any year and
5 ending on June 30 of the next succeeding year.

6 (18) "Fund" means the public employee retirement fund established by
7 this chapter.

8 (19) "Funding agent" means any bank or banks, trust company or trust
9 companies, legal reserve life insurance company or legal reserve life insur-
10 ance companies, or combinations thereof, any thrift institution or credit
11 union or any investment management firm or individual investment manager
12 selected by the board to hold and/or invest the employers' and members' con-
13 tributions and pay certain benefits granted under this chapter.

14 (20) "Inactive member" means a former active member who is not an em-
15 ployee and is not receiving any form of retirement allowance, but for whom a
16 separation benefit has not become payable.

17 (20A) "Lifetime annuity" means periodic monthly payments of income by
18 the retirement system to an alternate payee.

19 (20B) "Lump sum distribution" means a payment by the retirement system
20 of the entire balance in the alternate payee's segregated account, together
21 with regular interest credited thereon.

22 (21) "Member" means an active member, inactive member or a retired mem-
23 ber.

24 (22) "Membership service" means military service which occurs after
25 the commencement of contributions payable under sections 59-1331 through
26 59-1334, Idaho Code, and service with respect to which contributions are
27 payable under sections 59-1331 through 59-1334, Idaho Code, which, except
28 for benefit calculations described in sections 59-1342 and 59-1353, Idaho
29 Code, includes service transferred to a segregated account under an approved
30 domestic retirement order.

31 (23) "Military service" means any period of active duty service in the
32 armed forces of the United States including the national guard and reserves,
33 under the provisions of title 10, title 32, and title 37, United States code,
34 which commences less than ninety (90) days after the person ceases to be an
35 employee and ends less than ninety (90) days before the person again becomes
36 an employee. Provided, if a member fails to again become an employee as a re-
37 sult of his death while in active duty service, the member shall be entitled
38 to military service through the date of death. Provided further, if a member
39 fails to again become an employee due to a disability retirement resulting
40 from service in the armed forces of the United States, the member shall be en-
41 titled to military service through the date the disability allowance becomes
42 payable. In no event shall military service include:

43 (a) Any period ended by dishonorable discharge or during which termina-
44 tion of such service is available but not accepted; or

45 (b) Any active duty service in excess of five (5) years if at the conve-
46 nience of the United States government, or in excess of four (4) years
47 if not at the convenience of the United States government, provided
48 additional membership service may be purchased as provided in section
49 59-1362, Idaho Code.

(24) (a) "Police officer" for retirement purposes shall be as defined in section 59-1303, Idaho Code.

(b) "POST" means the Idaho peace officer standards and training council established in chapter 51, title 19, Idaho Code.

(25) "Prior service" means any period prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for the member's service prior to July 1, 1965, on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retired member" means a former active member receiving a retirement allowance.

(28) "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.

(29) "Retirement board" or "board" means the board provided for in sections 59-1304 and 59-1305, Idaho Code, to administer the retirement system.

(30) "Retirement system" or "system" means the public employee retirement system of Idaho.

(31) (A) "Salary" means:

(a) The total salary or wages paid to a person who meets the definition of employee by an employer for personal services performed and reported by the employer for income tax purposes, including the cash value of all remuneration in any medium other than cash.

(b) The total amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member.

(B) Salary in excess of the compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded for any person who becomes a member of the system on or after July 1, 1996. The system had no limitations on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall not apply for an "eligible employee." For purposes of this subsection, "eligible employee" is an individual who was a member of the system before July 1, 1996.

(C) "Salary" does not include:

(a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.

(b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs, sick leave payoffs, early retirement incentive payments and bonuses.

(c) Differential wage payments as defined in 26 U.S.C. 3401(h). A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than

thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

(31A) "Segregated account" means the account established by the retirement system for the alternate payee of a member who is not a retired member. It shall include the months of credited service and accumulated contributions transferred from the member's account.

(32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.

(33) "Service" means being shown on an employer's payroll as an employee receiving a salary. For each calendar month, service is credited only when a member is an employee as defined in subsection (14) (A) of this section and is employed for fifteen (15) days or more during the calendar month. Employment of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested member" means an active or inactive member who has at least five (5) years of credited service, except that a member, who at the time of his separation from service:

(a) Held an office to which he had been elected by popular vote or having a term fixed by the constitution, statute or charter or was appointed to such office by an elected official; or

(b) Was the head or director of a department, division, agency, statutory section or bureau of the state; or

(c) Was employed on or after July 1, 1965, by an elected official of the state of Idaho and occupied a position exempt from the provisions of chapter 53, title 67, Idaho Code; and

(d) Was not covered by a merit system for employees of the state of Idaho,
is vested without regard to the length of credited service.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.